

NATURAL RESOURCES COMMISSION

Minutes of September 20, 2011 Meeting

MEMBERS PRESENT

Bryan Poynter, Chair
Robert Carter, Jr., Secretary
Brian Blackford
Jane Ann Stautz
Mark Ahearn
Phil French
Doug Grant
Patrick Early
Thomas Easterly
R.T. Green
Donald Ruch
Robert Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Debra Freije

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Ron McAhron	Executive Office
John Davis	Executive Office
Chris Smith	Executive Office
Cheryl Hampton	Executive Office
Shelley Reeves	Executive Office
Jet Quillen	Law Enforcement
Jeff Barker	Law Enforcement
Jim Hebenstreit	Water
Phil Marshall	Entomology
Megan Abraham	Entomology
Dan Bortner	State Parks and Reservoirs
Mike Mycroft	State Parks and Reservoirs
Gary Miller	State Parks and Reservoirs
Mark Reiter	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Doug Keller	Fish and Wildlife
Mitch Marcus	Fish and Wildlife
Steve Morris	Outdoor Recreation

GUESTS PRESENT

Robin Wilson	Charlie Revard	William Garner	Sue Smith-Weideman
Jack Corpuz	Jeff Fetterer	George DeLay	Steve Weideman
Bill Herring	Doug Allman	Stephen Roszell	Tommy Smith
Paul Arlinghaus	Terry Bowling	Fred Taylor	Glenn Smith
Mike Hutherd	Justin Schneider	John Christopher	Nikki DesChamps
Clarence Williams			

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:03 a.m., EDT, on September 20, 2011, at The Garrison, Fort Harrison State Park, the South Ballroom, 6002 North Post Road, Indianapolis, Indiana. With the presence of all twelve members, he observed a quorum.

Robert Wright moved to approve the July 19, 2011 meeting minutes. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

Reports of the Director, Deputies Director, and Advisory Council

Director Robert E. Carter, Jr. provided his report. He said this year's third annual Hoosier Outdoor Experience program averaged 12,000 customers per day, even though attendance "was down on the last day due to the rain" and the first Colts home game. The Director thanked Bourke Patton, Executive Director of the Natural Resource Foundation; Shelly Reeves, Executive Assistant; Doug Wickersham, Property Manager for Fort Benjamin Harrison State Park; and all "DNR staff and volunteers and constituent groups for their hard work with making the Hoosier Outdoor Experience a success."

Chairman Poynter said he wholeheartedly agreed with the Director's comments. He requested and received "a round of applause for a job well done" by these dedicated public servants and citizens.

Director Carter recognized Nick Heinzelman, Director of the Heritage Trust Foundation, for his work on the Healthy Rivers INitiative and for buying land at a record pace to connect the Wabash River Corridor and the Muscatatuck River Watershed. "He's doing a great job there."

Carter said DNR was reviewing "many many topics" that are slated for the legislative Natural Resources Summer Study Committee Meeting "taking place at Brown County State Park." He thanked Ron McAhrn and his staff for arranging the latest round of field trips with the regulatory divisions, "and namely the Oil and Gas Division. We spent some time at the CountryMark Refinery, and that was a real fascinating trip."

John Davis, Deputy Director for the Bureau of Lands, Recreation and Cultural Resources, gave his report. He said DNR has been working with the Indiana Department of Transportation on developing ways to improve the effectiveness of enhancement projects. He said he will join

INDOT staff in talks with the Federal Highway Administration. “We have also been working with IDEM and Commissioner Easterly’s folks on permit process improvements.”

Davis reported the Charlestown well water improvements are completed. These include three new wells, a new pump-house, a new storage facility, and hook-ups to existing businesses “with the capacity for two million gallons a day in excess to what is currently being pumped. So, it’s a pretty good economic development tool at least for people in Clark County.” Davis reiterated the continuation of “the multi-state conversation concerning Asian carp and other aquatic invasive species.”

Ron McAhrn, Deputy Director for the Bureau of Resource Regulation, provided his report. He said the bureau continues to work on rule packages “to flesh out oil and gas statutory changes and for additional implementation steps on the Great Lakes Compact. We just finished the first comprehensive review of historic courthouses in the State of Indiana under a statutory mandate. We had great local participation from the Boards of County Commissioners and the Circuit Court Judges. There was very good work by our staff and the respective county representatives.”

CHAIR AND VICE CHAIR

Updates on Commission and Committee activities

Chairman Poynter reminded the members that the next meeting is set for November 15. He announced the meeting subsequent to that has now been scheduled for January 10, 2012. Both meetings are set for The Garrison at 10:00 a.m., EST. During the November meeting, dates and locations would be suggested for the remainder of 2012.

Vice Chair Jane Ann Stautz reported the Commission’s AOPA Committee met earlier in the day. She said Item #15 on the regular agenda was briefly discussed. A related element of the citizen petition was placed on the AOPA Committee agenda in the event objections were filed. “There were no objections in that matter so it is before the Commission here this morning.”

ADVISORY COUNCIL

Patrick Early, Chair of the Advisory Council, said the Council met at Fort Harrison State Park on August 17. “Some of the items on the August Advisory Council agenda are also on today’s Commission agenda. I’ll defer my remarks until those items are called.”

DNR, EXECUTIVE OFFICE

Consideration and identification of any topic appropriate for referral to the Advisory Council

No additional topic was identified.

DIVISION OF NATURE PRESERVES

Consideration of the dedications of the Bluffs of Fall Creek Nature Preserve, Chinquapin Ridge Nature Preserve, Lawrence Creek Nature Preserve, and Warbler Woods Nature Preserve in Marion County

The Chair reported four new nature preserves were being proposed for dedication in Fort Harrison State Park, Marion County. Although any of the four could be singled out for special discussion or action, in the interest of efficiency, there would be a combined presentation by the Department. He introduced John Bacone, Director of the Division of Nature Preserves.

John Bacone said he and Dan Bortner, Director of the Division of State Parks and Reservoirs, would offer background information concerning the four proposed nature preserves. He then yielded to Bortner.

Dan Bortner said his “goal was to have at least one dedicated nature preserve on each state park property.” He added, “We look at each proposal that comes forward on its own merit, taking into consideration the flora and the fauna, our acreage, and of course feedback from our sister agencies such as the Division of Fish and Wildlife and the Division of Nature Preserves.” He acknowledged that once a nature preserve is dedicated, the result is difficult to modify. “We also seek feedback from our user groups such as Hoosier Hikers Council, Hoosier Trail Riders, and the Hoosier Mountain Bikers Association. However, at the end of the day, the decision to place a nature preserve and what is or is not going to be in that nature preserve falls within the Division of State Parks and Reservoirs.”

John Bacone said “When this property was still in the Department of Defense, the Department of Defense contracted to perform a biological inventory, which we did in the 1990s. This was found to be the largest unfragmented block of forest left in Central Indiana. There were a number of high quality natural areas and rare species on the site.” He then distributed a handout to Commission members to help identify significant areas.

Bortner added that Fort Harrison State Park “is small compared to many other state parks. In addition, it is located in an urban setting.” The competition among user groups can be substantial, and balancing recreational and preservation needs is also a major challenge. “We’re forced to look not only at how we want to manage the park today, but what’s it going to look like 50 years from now?” He said the current proposals were a good illustration of efforts to balance competing interests. The Lawrence Creek Nature Preserve would “eventually have a mountain bike trail—a perimeter trail that leaves the interior undeveloped to benefit the forest interior birds. The Warbler Woods [Nature Preserve] has a hiking trail and a paved multi-use trail.” The Bluffs of Fall Creek Nature Preserve and the Chinquapin Ridge Nature Preserve would “stay relatively undeveloped to provide continued habitat for the birds and serve as a wildlife corridor.”

Paul Arlinghaus of the Hoosier Mountain Bike Association expressed support for dedication of the four nature preserves.

Commission Member, Donald Ruch, asked Bacone if the survey in the 1990s was directed mostly to animals. Bacone responded, “The survey we did focused mostly on plants and community habitats.” He said another survey by Brad Jackson of the U.S. Fish and Wildlife Service focused on birds.

Ruch asked Bacone if the only rare plant he located was the rose turtlehead. Bacone responded in the affirmative but added that ginseng and other notable species were also found.

Ruch said he was surprised, considering the habitat, that other rare species were not located. Bacone responded, “We were not experts on sedges.”

Commission Member, Tom Easterly, asked “Why is it that there are four separate units instead of just one?”

Bacone answered, “The main reasons were because of different structures in each one and the plants in each one being somewhat different. It made it easier to try and address them separately as opposed to all as one.”

Thomas Easterly moved to approve articles of dedication for the Bluffs of Fall Creek Nature Preserve, Chinquapin Ridge Nature Preserve, Lawrence Creek Nature Preserve, and Warbler Woods Nature Preserve in Fort Harrison State Park, Marion County. Donald Ruch seconded the motion. On a voice vote, the motion carried.

DIVISION OF ENTOMOLOGY AND PLANT PATHOLOGY

Consideration for preliminary adoption of new rule section to govern prohibited invasive aquatic plants and restricted invasive aquatic plants; Administrative Cause No. 11-054E

Phil Marshall, Director of the Division of Entomology and Plant Pathology, introduced this item. He turned to Doug Keller, Aquatic Invasive Species Coordinator, to provide some background for the rule proposal.

Keller began, “My job is first and foremost to prevent the introduction of aquatic invasives into Indiana waters and wetlands. When harmful species become established, my job turns from prevention to managing the invasive species.” He explained that for management of “newly established species with limited distribution, typically the first consideration” is to attempt eradication. When populations become more widespread the management of the species shifts to “control mode” maintaining populations at a low level to prevent hampering ecological function or recreational uses.

Keller stated that although he works for the Division of Fish and Wildlife, the rule is being proposed through the rule-making authority for Division of Entomology and its ability to regulate plant species. He said that he along with the DNR’s Executive Office and Phil Marshall worked “for some time” to create the proposed rule.

Keller said invasive aquatic plants reduce habitat diversity which ultimately reduces ecological function, fish and wildlife diversity, impede recreation, reduce property values, hamper water utility withdrawals and can contribute to flooding. Invasive species are “extremely expensive to eradicate or control.”

Keller provided examples of the costs associated with eradicating species that have been introduced in Indiana:

- Griffy Lake–Brazilian elodea. “A two year eradication cost \$150,000 for a 109-acre lake or nearly \$1,400 an acre.”
- Lake Manitou–Hydrilla. “We’re five years into eradication that is nearing completion. This eradication has so far cost \$1.6 million for the 735-acre lake or \$2,200 an acre.”
- Meserve Lake–Parrot Feather. “A three year eradication cost approximately \$50,000 for the 18-acre lake or nearly \$2,800 an acre.”

At the same time the DNR has been eradicating species, retail stores continue to offer invasive plants for sale. “If we want to prevent new introductions, we have to prevent these species from entering the supply chain.”

Keller said he and Phil Marshall worked with a number of groups to gather consensus concerning the control of aquatic invasive species. The Indiana Aquatic Invasive Plant Working Group consisted of Indiana DNR, invasive species experts from the Illinois-Indiana Sea Grant, the University of Notre Dame, The Nature Conservancy, and ecological consulting companies and stated “most importantly, we had representation from people representing the aquatic plant industry which included the aquatic plant growers, water garden retail industry, aquarium industry, and Indiana Nursery and Landscape Association.” He said the group developed a risk assessment process for aquatic plants to inform Indiana of the plants that pose substantial risk to the State and to identify those likely to be benign. The consensus concluded the plants listed in the rule proposal are “highly invasive species” and should no longer be for sale in Indiana in order to provide protection for Indiana’s aquatic resources.

Keller provided the following as purposes and support for the proposed rule amendments:

- 1) Prohibit the sale and distribution of 28 species of known aquatic invasive plants.
- 2) Seventeen (17) species are federal noxious aquatic plants. Since they are federally regulated, they should not be in trade. Adding the species to the list will allow DNR personnel to enforce their movement and not simply rely on federal authorities.
- 3) Five species are not federally regulated, and have little or no presence in trade, and yet are highly invasive. Regulating the five species should have no bearing on trade.
- 4) Six of the species have some presence in the aquatic plant trade, but will have minimal impact to the industry because of the abundance of “suitable options” of plants to replace those that are restricted. “The industry will simply replace the known invasive species with other less harmful species that have similar visual appeal.”

- 5) Everyone on the Indiana Aquatic Invasive Plant Working Group agreed “none of the species should be allowed for sale in Indiana because they are known invasives, and many of these have exhibited invasive tendencies right here in Indiana.”
- 6) The proposed rule was also endorsed by the recently formed Indiana Invasive Species Council.
- 7) The proposed rule was presented to the Advisory Council during its August meeting and the members’ comments were incorporated into the rule “as you see it today.”

Donald Ruch asked if the invasive species *Azolla pinnata* was the only azolla species the work group wanted to “keep in check.”

Keller responded, “That’s a federal noxious aquatic plant. From my knowledge, generally the azollas are a more southern species—a warm climate species—so the other azollas probably would not survive in Indiana should they get released.”

Ruch continued, “I routinely every other year take a class up to Tri-County Fish and Wildlife Area. I found *Azolla caroliniana* up there, and the population is growing over the years.”

Keller responded that he was not familiar with the species and said, “Again, we’re continuing to run species through our risk assessment tools, but only those species that have shown to be in trade. I’m not sure if that species that you’re referring to is in trade.”

Ruch reflected, “That’s a good point. It may not be.”

Keller added, “We can’t cover every single plant that grows in water. We’re just looking for the ones that are in trade.”

Ruch explained that “*Egeria densa*” (Brazilian waterweed) is a plant used by every university in the State, and “nearly every college” in the State, in order to study membrane transport and function. “There’s not a good replacement for it unless you use something like elodea, and I’m sure you don’t want us to go out and harvest the natural elodea to replace it.”

Keller responded that Native elodea is for sale through the biological supply companies, as well as the Brazilian elodea, “so it’s my feeling it would be a suitable replacement. The DNR is very familiar with Brazilian elodea being in the classrooms “because two of our populations of Brazilian elodea that happened in Indiana were on elementary school grounds where they probably had it in their classrooms. They did not have the heart to put the plants in compost or put them in the trash so they put them out in the pond, and that’s what’s happening with a lot of these species.”

Rush replied, “I understand the problem with it being an invasive weed, so I’m sitting on the fence with this one. But I agree with what you’re doing.”

Marshall stated, “If it’s for educational purposes, we can issue a permit to the institution, which I do, for various plants. There is a way that they can still use the material.”

Rush responded, “Right, and there’s no problem with that except you’re eliminating the easy access to the source.”

The Chair commended Keller for his “very detailed report. We appreciated it.”

Doug Grant moved to approve preliminary adoption of a new rule section to govern prohibited invasive aquatic plants and restricted invasive aquatic plants. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration for preliminary adoption to repeal of 312 IAC 18-3-20 governing the regulation of Brazilian elodea; Administrative Cause No. 11-156E

Phil Marshall presented this item. He said 312 IAC 18-3-20 currently governs Brazilian elodea as a “pest or pathogen” subject to Department regulation. Brazilian elodea is among the aquatic invasive species that would be governed by 312 IAC 18-3-23 as given preliminary adoption in the previous agenda item. The continued application of 312 IAC 18-3-20 after implementation of 312 IAC 18-3-23 would cause a redundancy and could result in unnecessary confusion. As a result, he recommended the repeal of 312 IAC 18-3-20. The repeal would be made to coincide with the adoption of 312 IAC 18-3-23 so there would be no lapse in regulatory authority.

Jane Ann Stautz moved to give preliminary adoption to the repeal of 312 IAC 18-3-20. Donald Ruch seconded the motion. On a voice vote, the motion carried.

Consideration for preliminary adoption of 312 IAC 18-3-24 to regulate “thousand cankers disease”; Administrative Cause No. 10-083E

Phil Marshall also presented this item. He said “thousand cankers disease” is the newest disease providing a major threat to forest resources. The disease is caused by an insect called the “walnut twig beetle” and the fungus “*Geosmithia mobid*”. Marshall added that the disease was “detected in eight States in the West over the last eight to ten years, primarily on black walnut trees that are native to the Eastern United States but not native to the West. We are seeing this disease slowly working through and killing black walnut trees in the West. It is a very serious risk for black walnut resources in the Eastern United States.” Indiana has a “very large walnut resource.” The black walnut tree is potentially the “most valuable” tree in the forest. Indiana nurseries “sell anywhere up to a half million black walnut seedlings a year.”

Marshall said the proposed rule would restrict all movement or introduction of any walnut product, but primarily logs and lumber, which could carry the fungus or the insect from the eight Western States. Last year, the fungus was also discovered in Knoxville, Tennessee, and approximately two months ago, in Richmond, Virginia and in Eastern Pennsylvania. The proposed rule would regulate the movement of walnut material from Pennsylvania, Virginia, Tennessee and the eight Western States. “It would be required under the permanent rule that logs brought in would be under a compliance agreement with DNR.” Marshall added “the walnut logs would be inspected by an agricultural official who would verify whether or not the logs

came from a county unaffected by the disease and also verify that the logs have also been inspected. The logging company would be required to provide a 24-hour notice to [DNR] for the arrival of logs. Finally, the logs would recheck for any evidence of the disease.”

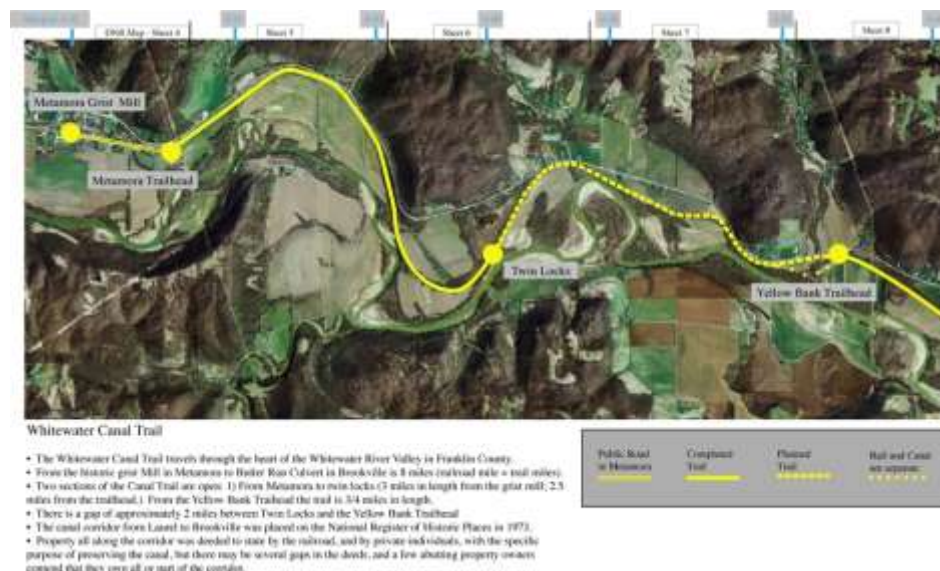
Marshall explained the Department has been operating under an “external quarantine” for more than a year. “The industry has been acceptable to this and has been working with the DNR, and we are giving them priority at all times.” He then recommended preliminary adoption of 312 IAC 18-3-24 to regulate thousand cankers disease.

Bob Wright moved to approve preliminary adoption of 312 IAC 18-3-24 to regulate thousand cankers disease. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF OUTDOOR RECREATION

Consideration of the Plan for Development of Whitewater Canal Trail with DNR property management through the Division of Outdoor Recreation

Steve Morris, Director of the Division of Outdoor Recreation, presented this item. “Our division has been pursuing a hiking and biking trail along the Whitewater Canal Corridor in Franklin County. It has been doing this in cooperation with State Museums and Historic Sites and working with a local trail organization. We’ve got 2 ½ miles completed on this trail east of Metamora, and we have got another ¾ mile completed east of a place called Yellow bank. There is a gap of about two miles in between, and we’re having some problems with land ownership there.” He then distributed a color aerial photograph which includes a yellow solid and dotted line depicting the existing and planned trail:



Morris continued, “The land ownership along this corridor is very complex.” He distributed a handout titled “Whitewater Canal Trail Chain of Ownership.” The handout was assembled by

“our cooperating trails group.” Despite extensive research, he acknowledged there are still outstanding title questions. “The Canal was placed on the National Register of Historic Places from Laurel to Brookville.” The State of Indiana has ownership of the majority of the pertinent area. “We’re coming before the NRC today to request that the DNR be allowed to move forward with settling land issues so that we can continue with developing this trail.”

John Davis added, “Mr. Chairman, what we ask of the Commission today is approval of the plan” as illustrated by the aerial photograph. The title issues which need to be resolved are suggested by the Whitewater Canal Trail Chain of Ownership. “Approval of the plan allows us to go forward with the acquisition of any rights that are outstanding.” Ultimately, “Commission approval would allow us to go forward with condemnation proceedings if we need to go to court. We’ve been trying to work this out with owners, and we have been doing some quiet title kind of work. That’s what we’re asking for.”

Steve Lucas asked if the trail was managed by the DNR through the Division of Outdoor Recreation.

Davis responded, “Yes, although this would be part of our new relationship with the Indiana State Museum and Historic Site Corporation.” The historic site at Metamora is part of the new entity. “We don’t feel like it’s any problem for the State of Indiana, through the DNR or through the State Museum, to have ownership of this corridor and to operate a state historic site on a portion of it that is also overlapped by a DNR trail.”

Davis asked Morris, “It’s part of our backbone system actually, right?”

Morris responded, “Yes.”

Davis continued, “Eventually we’d like to grow both south and east of Brookville and west and north of Metamora to go eventually to Connersville and US 40, but that’s much later.”

Brian Blackford moved to approve the plan for the Whitewater Canal Trail as existing and as depicted conceptually for development by the aerial photograph, including continuing efforts for title clarification and land acquisition. Phil French seconded the motion. On a voice vote, the motion carried.

DIVISION OF STATE PARKS AND RESERVOIRS

Consideration of temporary amendment to fee schedule for the state park inns for the period January 28 through February 12, 2012

Dan Bortner, Director of State Parks and Reservoirs, presented this item. “I want to clarify first exactly what it is that we are looking for. In 2006 when the fee schedule was set for DNR inns, all of the inns were at least one hour’s drive from the Indianapolis market. Now that we operate an inn right in the Indianapolis market, we find that we need to be able to react to market conditions as they arise. The six inns that we operate outside Indianapolis are really park driven. They will be fuller in October in Brown County, but it’s a park-based issue. We find in

Indianapolis that that's not the case. There will be people that will stay at the Fort Harrison State Park Inn that will never walk into Fort Harrison State Park. We've got to be able to react to market conditions a little bit quicker as they arise. So, what we're asking for here today is permanent authority for the DNR Director to modify the 2006 rates to be able to react to those modifications in market conditions."

Tom Easterly observed that it said on the agenda the modification was "for a very small period but now you're saying 'always'."

Bortner responded, "Yes. I think things got lost in translation. If it's a Moose Lodge Convention in the Town of Lawrence, I want to be able to react to that. Yes, obviously there is a big event coming up. But there was a big event last year, too, in the NCAA Final Four. In the Indianapolis market there are going to be a lot of events that we just have to be able to react to. You don't want to be the highest in the market. You don't want to be the lowest in the market. You want to be able to react to those conditions as they arise."

Easterly continued, "So, we need the motion to reflect what they really want?"

Bortner responded, "Correct."

The Chair summarized, "What I'm hearing you say is you want permanent authority vested in the Director of the Department to react to market conditions at State Park properties and Inns?"

Bortner answered, "Absolutely, and we want to do this across the board. There may be something in the City of Madison that we have to react to. We want to do this rather than piecemealing, and do it all together, and we're done."

Jane Stautz asked, "Is there any range limit? Is there an upper limit?"

Bortner responded, "The upper limit will be established by the market. If we go too high, nobody will stay with us."

R. T. Green offered, "I would move approval." Patrick Early seconded the motion.

Chairman Poynter stated, "Just so we're clear, there is a motion on the table that has been moved and seconded to give permanent authority to the Director of the Department to reflect market conditions at State Parks and other properties to set fees."

Mark Ahearn observed, "If we're changing this item a little bit" that seems all right. "But is it okay, if we make this change on the fly, for purposes of giving the public notice?"

The Chair observed, "I think that's a good point." He asked Steve Lucas for his perspective.

Lucas responded, "I think it would be preferable, if this is to be a permanent modification to the fee schedule approved by the Commission "in 2005, that the agenda item reflect the intent.

Authority to set fees was assigned by the Indiana General Assembly to the Commission. I think we should re-notice.”

The Chair asked Bortner, “Are you okay with that?”

Bortner responded, “Absolutely.”

Chairman Poynter continued, “I agree that we should do that in fairness. Would you be okay if we move this to be a November agenda item and took it off the table to reflect accurately what would be in the best interests of the Department?”

Bortner answered, “Absolutely, we want to do this once and do it right.”

Tom Easterly asked, “Do we want to give them the temporary authority now for the Super Bowl, and then look at the permanent authority in November?”

Gary Miller of the Division of State Parks and Reservoirs reflected, “If there would be the availability to do a temporary, and then do a permanent, that would be good.”

R.T. Green withdrew his original motion with Early’s consent. Green then moved to provide temporary authority to the Department Director, covering the period January 28 through February 12, 2012, to authorize a reasonable increase in the fees for the State Park Inns. Pat Early seconded the motion. On a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of report on rule processing, public hearing and written comments, response to comments by the DNR, and Hearing Officer analyses and recommendation regarding final adoption of rule amendments governing logjams removal amendments from floodways and navigable waters following P.L. 76-2010; LSA Document #11-170(F)); Administrative Cause No. 10-063W

Steve Lucas, Hearing Officer, presented this item. For consideration was the final adoption of rule amendments to govern logjam removals from floodways and navigable waters. The proposal would implement P.L. 76-2010 in which the Indiana General Assembly made broad policy determinations governing logjam removals. He noted both IDEM and the U.S. Army Corps of Engineers also have authority regarding logjam removals from rivers and streams.

Lucas recommended the language posted for preliminary adoption in the Indiana *Register* be given final adoption with one modification. The DNR’s Division of Fish and Wildlife identified a need to remove the term “unreasonable” from proposed 312 IAC 10-4-5(c), and he agreed. In addition, he referenced technical printing problems with the attachment to his report that would be corrected before final publication, if the Commission gives final adoption.

Lucas said the Hoosier Environmental Council asked that general licenses, with notice, be posted on the agency website and also made available on written request. General licenses with notice apply to the limited circumstances of salmonid streams and scenic rivers. In the hearing officer report, he suggested these requests did not appear unreasonable if feasible from a cost perspective. Following distribution of the report, the DNR's Division of Water (which manages the website) provided additional information. Since January 1, 2010, only one general license with notice has been approved. Modifying the website for such small numbers does not appear to be feasible from a cost perspective. On the other hand, a general license with notice is a license subject to IC 4-21.5. A person who makes a request to the Division of Fish and Wildlife, under IC 4-21.5-3-5(b)(4), would be entitled to notification. Lucas then recommended that final adoption be made to amendments to rules governing logjam removals as set forth in Exhibit "A".

The Chair recognized Justin Schneider.

Justin Schneider greeted the Commission and spoke on behalf of "the approximately 80,000 members of the Indiana Farm Bureau." He said members "are often impacted by logjams on rivers and streams. As a policy, our Farm Bureau has supported for several years what this rule is proposing to allow. We support this rule, as proposed, by implementation of its common sense mechanisms which individuals can use. It gives the agency the oversight to make the determination of whether it can be done. There is guidance in the rules for what needs to be done to ensure that environmental harm does not occur. We thank you for this effort and hope that the amendments are final adopted."

Phil French moved to give final adoption, as set forth in Exhibit "A" of the hearing officer's report, to amendments to 312 IAC 10 pertaining to logjam removals from floodways and navigable waters. Donald Ruch seconded the motion. On a voice vote, the motion carried.

Consideration on rule processing, consideration of public comments, analysis, and recommendation regarding final adoption of rule amendments relating to the hunting of deer (312 IAC 9); LSA Document #11-101(F); Administrative Cause No. 10-215D

Sandra Jensen, Hearing Officer, presented this item. For consideration is a proposal to amend administrative rules relating to deer hunting. Jensen said the rule proposal resulted from recommendations of the Advisory Council and the Natural Resources Commission as part of the Comprehensive Fish and Wildlife Rules Enhancement Project. Jensen noted this proposal is the final component of the project.

Jensen explained some of the specific amendments include the addition of a definition of "ground blind", which coincides with a proposed new requirement to display hunter orange on occupied ground blinds and the prohibition on the placement of ground blinds on DNR properties. The establishment of a special antlerless deer season is also proposed, and she noted contemporaneous amendments regarding license types and other technical amendments are necessary in conjunction with the new season. Under the proposed rule, the archery season would be extended and the use of crossbows would be authorized for use throughout the archery season. In order to hunt with a crossbow during the archery season, a hunter would be required

to possess a newly-created crossbow license. Other contemporaneous amendments, including the addition of a definition of “crossbow”, were proposed. The urban deer season would be lengthened, and the urban deer zones in Lake and Porter Counties would be revised. Jensen added that hunters taking advantage of the opportunity would be required to take at least one antlerless deer before taking an antlered deer during this season. Additional amendments would allow firearms hunting on military reserves and national wildlife refuges beginning on October 1st instead of November 1st, establish license bundles, increase the cartridge length for rifles, and make other technical corrections including those related to nonresident youth licenses.

Jensen noted the Commission granted preliminary adoption to this rule proposal in January 2011, and the Notice of Intent was published on March 9, 2011. The Department’s prepared fiscal analyses were reviewed by both the Office of Management and Budget and the Indiana Economic Development Corporation. Neither of those agencies offered objections to the fiscal impacts. Public hearings were conducted as scheduled on July 25 and 26, 2011 and “were very well attended.” Jensen said comments received at the public hearing were summarized, and those comments along with written comments received from approximately January 16, 2011 until July 27, 2011 were included in her report as Exhibits A and B, respectfully. Exhibits A1 through A6 include written comments received during the public hearings. Jensen offered a correction to the written report, which stated that the opportunity to submit comments ended on August 27, stating that the final day for submitting comments was actually July 27, 2011.

Jensen reported that after the close of the opportunity to offer public comments, the Department submitted a response to those comments on August 17, 2011. The Department’s response is included as Exhibit C in her report. Within the Department’s response is a recommendation to revise the definition of “ground blind”. All rule adoption processes and requirements were fulfilled, and the Department’s recommended revision was appropriately supported by written comments as identified in a footnote to her report. In Jensen’s opinion, the revision was a logical outgrowth of the published rule language. Also, working with Department representatives, the definition of “ground blind” offered by the Department was altered for technical and stylistic reasons. The revised definition of “ground blind”, which is recommended for final adoption, was included in the rule language attached to the report as Exhibit D. Jensen concluded by stating the “proposed rule is appropriate for final adoption” with a suggestion “the revision to the ‘ground blind’ definition be approved as part of that.”

Chairman Bryan Poynter reflected. “I’m very proud of the work of this Commission over the last two-and-a-half years. Some new faces have joined since the start of this comprehensive fish and wildlife review process. There have been thousands of hours of meetings, public hearings, and open houses, addressing this comprehensive fish and wildlife review process. This is the last piece of that project, and on behalf of the Commission, our objective, as we clearly stated from the very beginning, was to listen and to trust the constituents of the State of Indiana to offer their opinions across any subject of fish and wildlife rules on how we can enhance for our customers: those that are consumers of the hunting and fishing in our state, the outdoor recreation. Over the last two-and-a-half years, the work that this Commission has done has been noble, and I believe has made a substantial impact to making it easier for the consumers—those people who are buying our licenses, who are using our public lands, and who are enjoying hunting and fishing as a tradition and heritage.” The Chair also observed his pride in the involvement of the

constituents groups and citizens who became engaged in the process by vented and vetted their opinions about the issues. Also acknowledged by the Chair was the staff, the hearing officers and the Advisory Council, all of whom have “worked extraordinarily hard” and “given an extraordinary ear” to all of those people. The Chair expressed gratitude to the DNR Director, Rob Carter, observing that he has helped to oversee this process. In conclusion, the Chair noted that the process “has worked and has been conducted with utmost respect for all of those groups.” The Chair asked Commission members if they had questions for Jensen or any discussion to offer.

Patrick Early, Chair of the Advisory Council, responded that “This has been an exhaustive process,” but no matter how much effort is put into it “you can’t please everybody.” Early said he is a citizen appointed Commissioner with “an obligation to represent all of the different constituencies.” He expressed a belief the Governor made the appointments to the Commission to make sure that what occurs is good policy. The Division of Fish and Wildlife came out with a first proposal to address this issue with the “stated objective of reducing the number of deer in Indiana.” There are “places in Indiana where there are too many deer and places in Indiana where there aren’t too many deer.” The difficulty is in attempting to address “targeted reduction, because you can’t make it apply to this farm and not that farm and so on and so forth.”

Early continued, “After that first proposal was presented, there was immediate overwhelming opposition. We all heard it very loud and clear very quickly, and it became apparent to us that although it may be good biology, it was not going to be good public policy.” As a result, the first proposal was abandoned. The Commission requested Mark Reiter and Chad Steward in the Division of Fish and Wildlife to develop an alternative proposal that addressed the citizens’ concerns. Early acknowledged extraordinary efforts were made by the Division of Fish and Wildlife to develop the present alternate proposal. “There continued to be opposition, but there was not the overwhelming opposition that had been seen with respect to the first proposal.” As a result, the present proposal went forward, and public hearings were held. The Commission does not fulfill that process just “so you can say you went through the process.” Instead, the Commission takes “the process very seriously, and the Commission is trying to be responsive.”

Early said citizens have expressed concerns for the “massive expansion of the use of crossbows” in the present proposal. These concerns “relate to the efficiency of the weapon, the expansion of the use of crossbows to the entire season, the elimination of a season previously dedicated strictly to the use of vertical bows, the pressure that will be put on the buck population for an extended period of time in light of the extremely long gun season, and the use of that more efficient weapon” when the rut starts. “Although concerns have been heard from various different directions,” he still believes adopting a crossbow season expands opportunity and can reduce the deer herd with what many consider “a more efficient weapon.” There is “no real right answer,” and “we’re trying to figure out what the right things to do are.”

Early continued, “To that end, Mr. Chairman, I believe that taking all of the comments, both written and oral that we have received into consideration, I would like to offer one amendment today to the rule as an outgrowth to these public comments. The amendment that I would offer is that as the rule now states, crossbow season comes in on October 1st, and basically runs the duration of deer season. I would like to offer an amendment that crossbow season continue to

come in on October 1st, run the month of October, and then go out until the beginning of the general firearm season, whatever that date may be—giving the vertical bow-hunters some period of time where they have the deer woods to themselves, and, also, perhaps removing some of the pressure off of the buck portion of the population when they are the most vulnerable.” The management objectives have always involved killing more does so reducing pressure on the buck population would not impact the management goals of the rule proposal. Early then restated his offered amendment to have “the crossbow season come in October 1, go out at dark at the last day of October, and then come back in as we had planned with the general firearm season. The other exception to that, and— Mark, I don’t know how this figures in the rules that there are today, but we had talked about senior citizen crossbow hunters in addition to handicap permits. For people, I believe, it was 64 and over, would be able to hunt with crossbows and that that would not affect that group, so that those people could continue to hunt with crossbows during that two-week to 17-day period of time.” Early said he understood he was not offering “the right language to introduce into the proposal,” but “if the people that wordsmith these things understand what I’m saying, that’s what my proposal is.”

Chairman Poynter said with Early’s proposed amendment, “this would move forward for final adoption with the amendments as he has proposed, that crossbows would be allowed for the month of October—that season would go out for a period of October 31st through the opening the firearm season, which does have some flexibility of when that starts by statute. The only exception would be for the senior hunter as pertaining to previous rules, that that would not be included in that. Is that the way I understand it?”

Early replied, “Correct, and in addition, this would have no affect on any urban rules or military preserves—anything that have their own rules. This would be for a general rule, I guess.”

Mark Ahearn observed, “I can see the lawyers grimacing. Is it possible we could maybe procedurally introduce the change as it is drafted right now, and, so, then it would be on the floor? Then we would entertain amendments to it, and then we could have Pat’s amendment, if there are one or two. We would be sequencing it so we would know precisely which amendment we were voting on.”

The Chair replied, “I think there’s only one amendment. I’m not following.”

Steve Lucas added, “Well, it would be helpful to us if we knew exactly what rule language was proposed to be changed, and where.”

Jane Ann Stautz commented, “I think on page eight” of Exhibit D to Agenda Item 13 “what I understand is being recommended is where we’re at under section 4(c). It says, ‘The archery season is as follows:’ That’s where it currently describes the early archery season from October 1st through the closing day of firearm season as established in subsection (e). That would need to be amended to exempt out or except the crossbow. Use of crossbow would only run from October 1st to October 31st.”

The Chair said, “I need to get on the same page. I hear what you’re saying, and I’m concurring with that, I just want to make sure I’m on the same page as you.”

Jensen commented, “At the risk of confusing this situation, I’m going to ask if I can speak?”

The Chair responded, “Sure.”

Jensen said, “It’s not that this isn’t possible, but it’s going to involve more than what everybody might be thinking. For the sake of the fact that Linnea and I pretty much wordsmith this thing, I just want to point out there are, I think, two sections that would be significantly impacted by this. One of them Commissioner Stautz already touch on... is 312 IAC 9-3-3 where it states ‘equipment for deer hunting’ under subsection (b). It states during the archery season established in section 4(c), which is 9-3-3, ‘an individual must hunt deer only with the following equipment:’, ‘crossbow’ is listed there. That’s how it’s covered now, and we need to stay somewhat in that format. Somewhere along the line there’s going to have to be an exemption, apparently, for a period of time, in order to accommodate Pat’s request. I know those two sections are going to be involved. Whether there are other sections that might wind up having to be involved in this, I’m not certain yet.”

R.T. Green asked Lucas, “Would this be best that we do one of two things, either adopt the rule as is without amending it, with the idea that there would be a public hearing on the amendment to come back, and then adopt the amendment at our next meeting or hold this off and have another hearing and bring this back in November.”

Lucas replied, “The rule adoption process is so slow that we couldn’t possibly be back for a new proposal that soon. I don’t remember whether there would be time to make the modification and have an amended rule given final adoption in November or not.” He then asked the hearing officer whether final adoption could be deferred until November without violating the statutory deadline for completing a rule adoption.

Jensen responded, “Off the top of my head, I believe that there would be time.” The Notice of Intent was published on March 9, 2011, so “we should have time because we have to do it within 365 days from the day the Notice of Intent was published.” There should be time to bring this “forward in a more formal way with this revision actually put into the language” at the November meeting. “But I think that would be our last chance to do it.”

Chairman Poynter observed, “The risk of that has to be weighed by the Commission, that it would potentially cause a significantly greater problem than what we’re discussing here today. I need to understand ...why we can’t do that today?”

Lucas responded, “I have a problem with us doing it today because we don’t know precisely what we’re doing. We have to know precisely what we’re doing” before we present a rule “to the Attorney General’s Office. We need specific language. I don’t profess to understand all the social or biological issues, but one thing I do understand is we need to take specific language to the Attorney General for final adoption. We don’t have specific language now, and that’s what we need.”

The Chair commented, “Understood.”

Ahearn continued, “My question, Steve, is can we not, following Pat’s suggestion, instruct a staff member to amend section 312 IAC 9-3-4(c) on page eight to create a bow-only season, from the dates he described, and then such other technical amendments as are necessary to give effect to that?”

Lucas responded, “If that is the concept that is trying to be accomplished—and I don’t hear anybody saying it’s not—yes, we could do that. We can come back with language and present it to you, subject to your modifications, obviously. But, yes, we could and would come back with specific language based on your instructions.”

Ahearn commented, “Chairman’s point, I think, is we’re trying to get to final adoption today.”

Lucas replied, “We can sit down and try to do that today.”

The Chair stated, “Again, my concern, because we don’t know the technical nature of what may or may not change, and, if there are any hiccups along the way— I think what Chairman Early has recommended for our consideration today is worthy of attempting to do that, but I don’t want to do that in a misguided way such that we throw this out, under a ‘technical glitch’, for lack of a better term. Frankly, I’m a little befuddled because I understand that there are some intricacies here. If we did that today, how would that procedural work?”

Lucas answered, “I don’t think I understand the substance of the proposal well enough, but I think” Sandra Jensen, Linnea Petercheff, and Mark Reiter “understand it probably well enough,” that if they had a philosophical directive” from the Commission, “they could craft something and bring it back to you, say after a lunch break. But it is really very difficult to try to write a rule in the middle of a meeting.”

The Chair replied, “I completely understand that.” He asked Mark Reiter if he had any comments to provide.

Reiter responded, “There’s kind of two ways to look at this. One is to allow certain equipment under a season, and the other is to create a season. You guys are talking about it both ways, so we’re having a little difficulty here. One talks about allowing crossbow during the archery season which is established on page eight. The other talks about establishing a crossbow season that has a separate date, so the approaches are different.”

Jensen added, “I’m basing my thoughts strictly off of what Pat’s motion was, and that was for basically a hiatus from the use of crossbow during the archery season. Is that what I understood?”

Early responded the hiatus would be “for that period between November 1 and the start of the general firearms season. It’s not a set period of days because it varies.”

Jensen asked, “But there are essentially crossbows allowed during archery season except for that period of time?”

Early replied, “Except for—and I think you could—other than the fact you don’t like to do things that way, you could add an ‘except’.”

Jensen continued, “Because I know there are folks that are referring to this as a season type. That is what I think has Mark [Reiter] confused. I’m basing strictly off of what the motion has been so far. If that changes then obviously that’s what I will work off of. I think Steve is right. We could potentially do this, and I would hope that we wouldn’t make...mistakes trying to rush and get this done.”

Stautz reflected, “I might offer something for consideration, maybe for you to evaluate while we continue through the remainder of the agenda, and come back to this. If you do not want the intricacies of dealing with revising your definitions of ‘archery’, that you have in here, that includes the ‘crossbow’. If you turn to page eight, I might offer for the hearing officer and Linnea to consider, that you could consider that the archery deer season is as follows, and that this would be (c)(1): ‘early archery season is from October 1 through the closing day of firearm season, as established in subsection (e), with the exception of the use of crossbows, which season shall be from October 1 to October 31.’ You would then have to go back to add the second part of the ‘first Saturday after November 11’ language on the second page to extend it beyond that.”

The Chair suggested, “Why don’t we do this in the interest of time. I think that’s a good idea. Perhaps Mark, Linnea, and Sandy can take this and see if there’s something that can be crafted. We’ll move this item—continue it—to the end of our agenda, and we’ll see what you guys can come up with at that time. That would be clearer for us so that we know how you guys will present this, so as to reflect the wishes that we’re discussing here.” The Chair stated that the item would be tabled until the end of the meeting.

Early commented, “My only point at this point in time, all we have is we moved to amend it, and no one has even seconded it. Before we send them off to tailor language, don’t we need to kind of go through a process as to whether or not the motion is even on the floor, and the amendment is on the floor?”

Lucas reflected, “I think part of the problem with that is how would someone second a motion if they don’t have specific language?”

Early replied, “So, there is really no motion on the floor yet.”

Lucas added, “You philosophically said what you’d like to accomplish. It’s not for me to say how this should be done, but we have Mark, Linnea and Sandra, and I don’t think that there is an Open Door Law problem with a Commission member or a couple of Commission members sitting down with them, stepping away from this meeting” and drafting specific language that you agree “articulates your intent.” Doing so would also not create a quorum problem for the meeting. Another possibility is Mark, Linnea, and Sandra could draft it based on what they’ve heard and they understand.

Jensen said she believed she “grasped the intent of Early’s amendment” and explained her concern “is not a function of not understanding what Pat’s talking about. It’s a function of

there's a lot of stuff in here to consider." She agreed that "Commissioner Stautz's recommendation may be one way to fix it. It's just there are a lot of other pieces that may mesh into this, and I'm not going to have a lot of time to look at it, so that's my only concern. But before...leaving the room and trying to work with Linnea and Mark on drafting the language, we need to get to where Pat's motion is at. I want to make absolutely certain that I understand and that is that crossbow [use] would be allowed during the archery season from October 1st to the last day of October and then would come back in with the general firearm season."

Stautz said, "I left a word out in my scratching. It's really the 'early season' that we're trying to redefine for crossbows, so that you're narrowing the period of time for the early season for crossbow. With the exception of the use of crossbows, which early season is from October 1st to October 31st, then you don't bring into the play any of the other issues with the later date, if you define that 'early season'."

Ruch asked, "Pat's suggestion also included that if you're over 65 you could use the crossbow all those days? My question was did he also mean for the people who have disability?"

Early said Ruch correctly expressed the intention.

Jensen commented, "The rule amendments relative" to hunters over age 65 or with disabilities, "I don't even think were part of this package."

The Chair agreed, "No, those are under a separate rule proposal."

John Davis commented, "I think part of what Pat wanted to make sure of is that the Commission didn't have other issues that were going to come up after people went away and came back that needed to be discussed. Is that part of your question?"

Early replied, "Part of it, yes."

Davis asked, "Is it not possible to do what was suggested by leaving everything as it is and adding something like 'Notwithstanding any other aspects of this rule, no crossbows are allowed in the field between November 1 and the beginning of firearm season?'"

Early replied, "With the exception of seniors...because that's not in there right now."

Davis said, "That's a thought maybe for the people who are leaving."

Jensen emphasized, "It's the addition of the seniors that actually concerns me more than anything. I'm concerned about that even being a 'logical outgrowth' of the rule as it was originally published." She acknowledged "there may be comments" about a special exemption for seniors, "but in order to make a revision to a rule it has to be a logical outgrowth of the language as it was published." The present rule amendment language as published "doesn't say anything, it doesn't even contemplate seniors.... Obviously that's not my call, but it is a concern, so I think I need to raise that."

Early asked Jensen, “If we don’t include the ‘seniors’ language, is it possible to come back and bring that in later without going through the whole rule?”

Jensen answered, “It would be a whole new process. I just bring that up simply as something for the Commission members to consider, that there’s sort of a two-prong thing here. Any revision must be a logical outgrowth of the published language that is supported by a written comment. We haven’t even gotten to the written comment part. The concern I have with the seniors language is not the need for written comments,” or the wisdom of the concept, but whether the requirement for “logical outgrowth” is met “relative to ‘seniors’, because that’s not really in any of the language” given preliminary adoption, “anything about seniors at all. It is in the comments, but I’m not sure it’s a logical outgrowth, and it’s obviously not my decision. Ultimately, it’s the Attorney General’s Office decision, and I would just ask you all to think that through.”

The Chair commented, “I understand that this is a little unprecedented, and it’s a little out of the ordinary. I concur that this is worthy of consideration” later in the meeting today. “I know you have a couple other agenda items to present, that before you vacate, that we could leave this.”

Jensen replied, “My other one is the very next one up.”

The Chair said, “Okay. Is everybody on the Commission okay?”

Robert Wright, “I get the impression that there are people here who want to speak. Should we not hear them before we make these decisions that this modification is going to pacify everybody?”

Chairman Poynter answered, “Yes, I agree. That’s kind of where Pat was going with this. I mean, obviously, hearing what we’re asking to be done, there are several people in groups organized here that would like to talk. I have no issue with that.”

Ahearn asked Jensen, “Just because I simply don’t know, but it’s my feeling that the Attorney General’s Office, if we run into an issue, doesn’t redline and rewrite the rule.”

Jensen replied, “No.”

Ahearn added, “They send the whole rule back. So we want to be as comfortable as we can. We don’t want to sink a major rule” on a relatively limited amendment or amendments. We need to understand “the Attorney General won’t red line that out.”

Jensen said, “To add to that, it’s not that they necessarily will just send it back. The Attorney General might just kill it. Sometimes they let us recall it and take another stab at it. Sometimes they don’t. That’s their call.”

Director Rob Carter observed, “A lot of times we lose focus on what we’re trying to do here. Our goal is to target heavy populations of deer in certain areas of the State. That’s our goal: to reduce the herd. That’s what Mark’s charge was, and Linnea’s, to do that. This is a small itsy

bitsy piece of that goal to tweak the rules, to make it easier for the take. This has been a hot topic. I never realized how much pushback we would get.”

The Director added there are numerous other issues challenging agency efforts to reduce deer populations. “We still have access problems. We still have freezer space problems. We still have [people saying] our tags are too expensive, and, you know, a lot of people can’t afford them. We need to take more does. We realize that. But I want everybody to realize that our overall goal is to reduce the herd because there are areas of the State where there are too many deer. It seems like we take our eye off the prize a lot of times.” There are legislators who are promoting the reduction of the deer herd especially in northern Indiana where there are just too many deer. “So, that’s our goal. I want everybody to understand that.” Carter noted his understanding that a lot of people passionate about deer hunting but for example “in Clay County where I live, there are too many deer, and there are too many conflicts with humans, so we’re trying to reduce that.”

The Chair reflected, “Well stated. I guess in the interest of what we should do next, hearing that there’s a suggestion in what we’re potentially asking the Division of Fish and Wildlife staff to come back to the Commission to do, and for the Natural Resources Commission hearing officer ...to do, I think it would probably be prudent if we went forward with some of those who have offered their opinions on this to come forward.” The Chair first recognized Mark Reiter.

Reiter responded, “I hear what you guys were saying, what Pat was saying about we need to be responsive to our customers. We have tried to do that all through this process. I think the Division of Fish and Wildlife would still prefer that we put crossbow hunters, additional people, out in the field, as much as we can. That way we would keep that long crossbow season that runs all the way through pretty much the whole deer season. We would accept this, of course, and it would give us an opportunity to see what kind of extra efficiencies we get in removing deer by allowing people with crossbows to be out there. I guess as long as we don’t take that tool out of the toolbox that we can extend a crossbow season. Maybe if we really feel that we’ve come upon a very effective tool and come back and talk to you guys about that again, maybe in a couple of years, maybe we can put together a little bit of data about just how efficient crossbows are.”

Bryan Poynter continued, “I think as Chair of the Commission, I would fully make sure that the record stated that this conversation is one that, you know, there are a lot of other tools available. We’ve talked about a lot of different tools, and they’re still all eyes on this, because what we’re suggesting to be done with this rule package is a potential modification which I support. You know as I heard him, and in principle, and that’s why potentially we would ask that this be done today. It is just a tool that has to be measured, and that leaves a lot of room open. As Director Carter said, you can only do so much with management of a population through seasons and equipment. We still have access issues, and we still have tremendous issues with what to do with deer that potentially hunters could go out and kill in terms of the benevolence fund and other things. This is just a piece of overall management strategy that we would firmly support potentially having to look at this again if it doesn’t go to the extent that we hope that it does. It’s ultimately going to fall on the backs of the hunters to do what Director Carter has said.” The

Chair recognized that “there are too many deer” and that the “management philosophy for our deer population has changed to reduce our deer population.”

Reiter continued, “Of course, one of the main reasons for that objective and this strategic reduction is to ensure hunters continue to be considered the number one management tool for deer” because the only other management comes from disease, cars and predators.

John Davis reflected, “Mr. Chairman, related to what Mark said, I think Chad Steward, our deer biologist..., is going to have better tools ... now to pinpoint, and we’ll be able to see what some of these efforts lead us to, whether more people in the field at this time or that time is more effective or less effective. I think we’ll be able to have an ongoing conversation about effectiveness with the Commission.”

The Chair then recognized Jensen who had gestured for permission to speak.

Sandra Jensen said, “I found something totally unrelated to the substance of this rule, but it’s an important technical correction in my report. Under subsection (2)(b) under the heading ‘Comments Received Outside the Public Hearing’, I have the date ‘August 27, 2011’ as the last day public comments were accepted. The date was July 27, and I need to reflect that for the AG’s office as well. I wanted to make sure I clarified that for the record.”

The Chair asked if there were “questions, comments, or opinions, from other Commission members that have not yet been made?” None were offered and the Chair then called upon Justin Schneider from Indiana Farm Bureau to speak.

Justin Schneider addressed the Commission on behalf of the members of Indiana Farm Bureau. Schneider thanked “the Commission and the DNR staff for the work and for all the meetings and everything that’s been done over the last few years in an attempt to address this issue.” He advised that this is a significant issue for the Farm Bureau’s membership, which is controlled by our policy book passed by the delegates. The policy, according to Schneider, supports “greater controls on the deer herd through increased hunting pressure.” Schneider stated a belief that this proposal accomplishes that through the licensing bundles, the increased use of crossbows and especially through the additional antlerless deer season. He expressed the Farm Bureau’s support for the adoption of this rule.

Schneider noted that one of the things he mentioned the last time he testified before the Commission was for the Commission “to view this as an opportunity for the DNR and Chad to look at it and to look and see what happens.” He urged that holding this “static is probably not wise.” He observed the process has been contentious and expressed understanding that no one wants to go through it again but emphasized that it is very crucial that “we start to get the deer herd under control. I grew up in a county on a farm where there were too many deer. I live in a town where there are too many deer, and it’s important that we get the deer herd under control. I’ve worked with a lot of wildlife biologists from other States. One is Mississippi which advised me that their deer herd is out of control. Wildlife biologists right here have said that ‘we are close to being in that same point’ in several of our counties to the point where there’s no way

you're ever going to bring it back. It's crucial we get this adopted and try to get the deer herd in check."

The Chair next called upon William Garner to speak.

Garner said he represented himself. Garner explained that he has been a bow hunter since before compound bows were introduced and reflected that some of the arguments archery hunters had then against compound bows are the same arguments that compound bow hunters have today against crossbows. At that time, they said the compound bow was too efficient, and it infringed on their rights of hunting. He said he bow hunts all over the United States and in Canada with compound bow and recently purchased a crossbow. Garner offered support for the proposal to add the stipulation that if you're over 64 to be able to hunt with a crossbow explaining that he has had a hip replacement and could do irreparable damage if he were to fall from a tree stand. "The efficiency of my crossbow is actually more lethal as far as kinetic energy than a compound bow, which is less likely to result in non-lethal injury to deer." Ohio has allowed hunting with crossbows since 1970, and the Ohio deer herd is flourishing. Garner supported extending the use of crossbows to the whole length of the archery season and muzzleloader season.

Clarence Williams, also representing himself, addressed the Commission next. Williams said he manages Indiana Hunting Forum, and, in that capacity, tries to stay updated on what is posted on other websites and what is going on with the DNR and the NRC. "I try to get all members involved that I can." He said a month-and-a-half ago it was posted on several websites by one of the president's of one of the stakeholders groups that the crossbow proposal "will be amended—not may be and not could be. It will be amended."

Williams noted that what was being discussed was reducing the use of crossbows to the month of October, which cuts them out a good percentage of the times that the deer are most active. Williams noted Early's comment that this is when the bucks are most active noting that this is also the time when the doe's are most active. Accident reports reflect that deer and vehicle accidents peak right about October 31st. In reducing the amount of time the crossbows are allowed, the crossbows are being removed from the rut, which is what Kentucky did five or six years ago. "That's it, period." He said the same groups that were for the first proposal, which tried "to kick the gun hunters out of the rut..., don't want the cross-bowers in the rut or pre-rut. Make no mistake about it. It's not about deer reduction for these folks. It's protecting that antlered buck. They want it all for themselves. It's selfishness on their part."

Williams further observed that Early's proposal would remove crossbows from the woods from November 1st to mid-November when the firearm season comes back in. "When firearms season comes back in, I guarantee you the cross-bowers are not going to want to come back out there, as neither do the bow-hunters." According to Williams, a DNR survey revealed that only 5% of bow-hunters hunt during firearms season. He concluded the cross-bowers will be lost during the firearms season. "People can't kill deer if they're not out there." Williams asked whether taking crossbows out for eleven days or 13 days would make any difference.

The Chair responded. "I could ask you the same question. Nobody knows." The Chair said the Commission is trying to come up with the best compromise, noting that he and Williams have

“exchanged a hundred emails about this subject and what I’m suggesting to you is that... the opportunity for crossbows will markedly increase the number of deer that are killed in the State of Indiana sooner, with better weapons, more people, younger people, older people, and it will affect the herd, but who knows how much.” The Commission is trying to “come up with the best solution for all the hunters to share the same woods, to increase efficiency, and to kill more deer in targeted areas.”

Williams added, “The only way you’re going to kill more deer is to have more hunters.” Having more hunters is also going to increase revenue for the DNR. Williams advocated allowing crossbows to be used during the entire archery season. It doesn’t matter “whether you kill a deer with a crossbow or a compound or a shotgun.” When people are taken out of the woods, you’re “reducing the opportunity not only to recruit hunters, but also decreasing the opportunity to kill a deer, which is what this all is supposed to be about.” He asked that the amendment not be considered but that the Commission “go ahead and pass this thing, let’s get it done.”

Phil French said, “I’m a little confused. Your comment was that we’re taking people out of the woods. We actually, in a sense, are putting people in the woods.... We’ve added people into the woods with crossbows, starting at the beginning of October 1st. We’ve actually put more people in the woods for 30 days. I know that we’re talking about a two-week period, so we’re not actually taking people out of the woods. They may not be in the woods as long as we initially talked about. Am I right?”

The Chair responded, “Correct”. He then called Doug Allman.

Doug Allman said he spoke on behalf of the Indiana Wildlife Federation (the “IWF”) and the Indiana Sportsmen Roundtable (the “ISR”), noting that Barb Simpson, President of the IWF and Gene Hopkins, President of the ISR were unable to be present. He read the following statement from the IWF:

The Indiana Wildlife Association actively support the process used for determining the resulting proposed deer changes initially proposed by the Natural Resources Advisory Council and the Commission and believe the North American Model of Wildlife Conservation which defines wildlife as a shared resource to be managed for the benefit of the resource and the people. We also believe that the deer population exceeded maximum carrying capacity for the State of Indiana and need to be aggressively managed for reductions. However, the IWF withholds our support, versus opposing... we’re withholding our support for the second set of deer rules currently being proposed for several reasons. First and foremost, we do not believe this set of rules will make significant progress toward targeted effective population reduction of Indiana’s herd. With exception of the proposed December antlerless season, we see little evidence that the science that demonstrates a meaningful impact of the rule change proposed. Even more troubling is the appearance that some of the proposed rules were added outside of the process to appease specific groups, i.e. crossbow in archery season. This, in our minds, is dangerous precedent to set. (1) that it strays from science based management of the resource. We believe the rule change should be driven by best available science and based upon the most effective means of accomplishing that goal that was set forth initially: targeted population reductions throughout the state. The current proposed new rules fall well short in accomplishing that. For these reasons, we withhold our support

and urge the Natural Resources Commission to revise the proposed changes to more closely reflect the original proposal.

Allman continued, “I’m not going to read all of Gene’s statement, I’ll be brief because it reflects some of what the IWF has put forth but I would like to read one part of this. ‘The ISR is mixed ... a lot of these groups are mixed on this. There’s things we like about both proposals. And, there’s things that we support with this package going forth. We felt the first proposal was probably the most aggressive and we thought that it put aside some of the weapon issues and concentrated more on hunter behavior. It took a focus off of killing the antler deer and putting it more on does, and that’s what we liked about the first proposal.’ In paraphrasing Gene’s statement: since we have been presented with the second set of proposals, some of which indeed are good, some very well thought out such as orange on ground blinds and youth and urban opportunities, we still believe that these proposals which address the original targets as given by us, and the DNR does not, this is what we have faults with. We have not increased pressure on the antlerless deer in targeted areas of the state. Other than urban areas, we have not done anything to convince hunters to target antlerless deer where the reductions are targeted. We have not done anything to address helping hunters gain access, which Barb and others have mentioned, and we have not addressed how to help hunters donate venison. Again, I guess the ISR is suggesting we need further discussion on this. I want to submit these both, who do I give these to? I’m not sure the proposal is going to play out for Pat, but I thank you for your consideration.”

The Chair called upon Terry Bowling to speak.

Terry Bowling, Vice President of the Indiana Bowhunter’s Association (IBA) addressed the Commission. Bowling said that he agreed with “a lot of Allman’s comments. Our organization doesn’t feel that this second proposal will do herd reduction the way you all believe it will.” The IBA believes the proposal will result in a shift of the harvest of antlerless deer from November, in the firearm season, to October. Bowling requested “further consideration of this issue include a review of deer hunting in Illinois,” noting that “Illinois is our closest neighbor.” Bowling acknowledged “the terrain is a little different,” but said approximately 20 years ago Dean Zimmerman, a local wildlife biologist, said the “deer herd needed to be gotten under control.” Bowling said there are guys trying, but he lives within three miles of an urban zone and can’t get permission to hunt in any of it “because it’s privately owned. Access is a big issue.” He added, “Illinois does what the DNR’s first proposal did.... It has two short seasons. They hit the deer hard, and then they get off of it. It’s essentially having two opening days in the same year.” More than 80% of the deer killed are killed in the first three days of Indiana deer season. By doing that twice in one year you harvest that number of deer twice in one year. “The harvest has to go up.” Bowling noted the issue should not be “about equipment issues or what people or groups want. It should be about getting our herd under control. The first proposal absolutely would have done it.” Bowling acknowledged “the time and effort that has been put into this. It’s tough, but nonetheless we just have to stand opposed to this proposal.”

John Christopher declined the opportunity to comment saying he had nothing different to add.

The Chair then asked for any “further questions, comments or follow-up from Reiter or Commission members.”

Ahearn asked Bowling for clarification. “When you said you were opposed to the proposal, did you mean the amendment or the proposal that was originally drafted that we started the day with?”

Bowling replied, “The original.”

Chairman Poynter asked Jensen to return to podium. “I think as Chairman of the Commission, one of the things that I have to do, and that this group has to address, is what’s feasible and what’s reasonable. I also want to do this correctly, in the effort to make sure we don’t jeopardize the overall integrity and intention for what has been suggested. What do you need to do address the suggestions that have been brought forth today? What do you need to see? What do you need to do in order to get that put together?”

Jensen replied, “Provided I understand what’s intended, the biggest thing is just for—well, here’s a for instance. There are some other references that Linnea and I found where there has been reference to ‘crossbow in archery season’ just throughout the rule, not related to the two sections have already been identified. Where we’ve got that, we’re going to have to make technical changes there because any reference to ‘crossbow in archery season’ tends to infer all of archery season, and we’re going to have to essentially specify that ‘No, it’s not all of archery season. It’s as specified someplace else.’ It’s a function of time and actually, quite honestly, some peace and quiet, to identify all of that and to make sure that you catch all of that. That’s what Linnea and I do quite frequently back and forth for days on end whenever we’re writing one of these, and you’re asking us to do it in ten minutes.”

The Chair commented, “In the quiet of your office.”

Jensen said, “Yes. And, you’re asking us to do it in ten minutes and to borrow a computer from—that why I’ve been running around back here trying to gobble up resources. I’m not going to say it can’t be done by the end of the meeting, but it would be much more comfortable if we could do it some other way. What I need, what I absolutely positively need is all the pieces in place to go to the AG’s office. That is rule language and that is the justification that says this is a ‘logical outgrowth’ which is my concern about the seniors crossbow issue. We have to be able to justify that stuff for the Attorney General’s office review. That’s what I don’t feel like I have time to put in place right now. And, no matter how much time we spend on rule language, that and finding the public comments, the written public comments that support these revision. I’m not saying they’re not there. I’m saying they are there. But [I need] the time to find them and to justify how they fit and how they go into this. That’s what’s really going to take the time. But, we can get the language together by the end of the meeting. Those other pieces I don’t know if we can get together, because these are these things that you guys—and you may already know. You made the suggestion. You may already have circled comments that say this and say that. If that’s the case, then that’s great. But, if that’s not the case, those things really need to be in place before we would be able to put together the package to send to the AG’s office, even after the meeting.”

Early added, “Sandy, we’ve had two years of comments one way or another, okay, and the purpose behind the proposed amendment was to try to react to what, at least I believe, I’ve been

hearing for a long time. I mean, there are some that are in written form. There are many that came as a result of hearings and everything else. The one thing that I am unwilling to do is not get a rule passed. What I don't want to have happen is for you to go the AG's office with something and then they pull the entire rule, and we're back to ground zero. Because we're never going to get two different deer hunters to agree we did the right thing. I've given up on that."

Jensen replied, "That's the reason why my recommendation, at the end of the day, is we've done everything right, and it's appropriate for final adoption. There's a lot of different ways to get to your target."

Early continued, "Well you can't get two different people to agree that there are too many deer. It doesn't matter what the topic is. So, what I am concerned about by introducing this is I don't want to blow all the work that we've done. Whether you like all of it, or you don't like all of it, I think that Mark and Chad came back with the best rule that we could have possibly gotten somewhat general acceptance. I mean, nobody likes all of it. Nobody likes pieces of it or whatever else. It may not work because these guys are right. If you don't have access, and you don't have a program that allows people to harvest more does and donate them, it doesn't make a whole lot of difference what weapons you bring to the table. You're not going to kill more deer without motivating or incenting people to do that somehow.... I would defer to you and Steve, if you think we're putting the entire rule at risk. Mark has already stated he would prefer we go forward with the rule as we originally adopted it. I would have to defer to your opinions and say, if you think we're putting the whole package at risk, then I don't want to do that. Obviously, Mr. Chairman, the last thing I want to do is waste the two years we've tried to make some positive strides."

Jensen stated, "I will honestly say unequivocally... that my opinion is there's some jeopardy here.... From my perspective, as far as the paperwork goes, it's not all there. It's just not there. We can put the rule language there, but the two pieces that concern me the most are the justification: the logical outgrowth and whether or not we've got the public comments that we can pinpoint.... I don't have time between now and the end of the meeting to actually get there. That's my concern."

Lucas added, "There is never a rule proposal that we submit to the Attorney General's office that is 100%" assured of being approved. The Attorney General's office "has identified problems before with rules when we didn't think we had any problem. We've been able, I believe, to iron those out. You had one of those come through the last Commission meeting regarding Red Bird Riding Area. I wasn't cognizant that there was a problem until the Attorney General's Office told me there was. So, ultimately, it's the Attorney General's call, and we never have 100% assurance of approval. But I definitely think, with what Sandra has presented to you today for final adoption, the Commission would have a higher percentage number for likely success than if it were modified today. First of all, we have to identify specific language for submission to the Attorney General. It sounds like there are multiple places in the proposal that would need to be modified. Secondly, any change has to be a 'logical outgrowth'. Thirdly, there have to be written comments to support those changes. Any one of those aspects can present a problem. Although I would say the proposal as recommended by the hearing officer is not 100% assured

for approval, it's near 100%. Anything else you would present to the Attorney General's Office, based on changes made during the meeting today, would be a lower percentage."

Early stated, "Mr. Chairman, I'd like to withdraw my amendment and move for acceptance of rule as proposed with the revision recommended by the hearing officer. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration of report on rule processing, consideration of public comments, analysis, and recommendation regarding final adoption of rule amendments relating to endangered species of reptiles and amphibians; LSA Document # 11-196(F) Administrative Cause No. 10-170D

Sandra Jensen, Hearing Officer, introduced this item. She said the proposed rule amendments would add the Plains leopard frog and the mole salamander, and remove the four toed salamander, from the list of endangered species of amphibians. The rule amendments were granted preliminary adoption in November 2010, and the Notice of Intent was posted in April 2011. The Department's fiscal analyses were submitted to and approved by the Office of Management and Budget. Because there were no fiscal impacts to small businesses, the proposed amendments did not need to be submitted to or reviewed by the Indiana Economic Development Corporation.

Jensen noted a public hearing was held as scheduled on August 3, 2011 at the Commission's Division of Hearings office located in Indianapolis. Jennifer Kane presided. Lee Casebere of the Department's Division of Nature Preserves attended the public hearing. No member of the public attended.

Jensen said the limited number of written comments appeared to be from scholarly sources, or others involved in the conservation and preservation of reptiles and amphibians, and were in general support of the proposed amendments. She recommended final adoption of the amendments.

Doug Grant moved to approve final adoption of rule amendments relating to endangered species of reptiles and amphibians. Robert Wright seconded the motion. Upon a voice vote, the motion carried.

Consideration of citizen petition for rule change to allow high-speed boating on Shipshewana Lake, a "small lake" located in LaGrange County; Administrative Cause No. 11-158L

Steve Lucas introduced this item. He said for consideration was a citizen petition for rule change. Although most petitions for rule change are administered informally through a Commission nonrule policy document, for a handful of subjects, the process is governed by statute or rule. A citizen petition to allow high-speed boating on a "small lake" is governed primarily by IC 14-15-3-11. This statutory section anticipates the possibility of adjudication

pursuant to IC 4-21.5 (commonly called the “Administrative Orders and Procedures Act” or “AOPA”), and the possibility of rule adoption, if the petitioners establish the elements of a statutory platform.

Lucas said explicit or implicit “to IC 14-15-3-11 as a platform” is the petitioners must show: (1) a watercourse is a “lake”; (2) that contains more than 70 acres and fewer than 300 acres; and (3) a majority of abutting property owners signed the petition. Here the petitioners established the three platform elements for Shipshewana Lake, LaGrange County. Shipshewana Lake is a “lake” that contains approximately 200 acres, and a majority of the abutting property owners signed the petition. This aspect of the statute formed the basis for an AOPA proceeding that is available through a search engine on the Commission’s website at www.ai.org/nrc/2369.htm as *Taylor v. DNR*, 12 Caddnar 328 (2011). He distributed a printout of the decision and said this aspect of the petition was final.

Lucas explained that still for Commission consideration was the rule adoption portion of IC 14-15-3-11. As provided in the statute:

Sec. 11. (a) The commission may adopt rules under IC 4-22-2 to exempt a small lake containing more than seventy (70) acres from [the ten-mile-per-hour speed limit under IC 14-15-3-10] if....

....

(2) An unreasonable hazard to persons would not result.

(3) An unreasonable harm to fish, wildlife, or botanical resources would not result.

....

(c) ...[T]he commission may adopt rules to establish restrictions for the safe operation of watercraft if unusual conditions or hazards would otherwise result by granting the petition....

Lucas reported the AOPA Committee reviewed the subject briefly during its meeting earlier in the day. There are 15 existing lakes or chains-of-lakes where rules allow high-speed-boating on small lakes. Because he served as the administrative law judge for *Taylor v. DNR*, if the Commission elected to give a rule preliminary adoption, Sandra Jensen would serve as the Commission’s hearing officer for the rule review.

Chairman Poynter recognized the Commission’s Vice Chair, Jane Ann Stautz, who also serves as the Chair of the AOPA Committee, and asked for her perspectives.

Stautz suggested, “Let’s hear from the DNR, as well as the other interested parties. If there are questions, maybe the members of the AOPA Committee could assist.”

The Chair continued, “Understood. I will invite, first, Fred Taylor to come forward and talk about it. You are the proponent of this rule change?”

Taylor responded, “Yes.” He then greeted the Commission and presented the petition. “I am a property owner at Shipshewana Lake.... When [DNR] finally defined what is ‘abutting property

owners', they came down to around 90 or 95 property owners.... I have over 63% of the abutting property owners in favor of this petition."

Taylor said, "I'm from the old school that this country was founded on democracy. I know that a lot of things over our history has changed where sometimes that does not prevail. Where it would be like this side over here says they want something. This side here says 'no'. Well, this is a majority. Well, it ends up that a minority ended up getting their way because they greased somebody's palm. I don't believe in that."

Taylor continued, "I went around. I spent a lot of time on this petition. I met a lot of good people during this process. You're going to hear from the lake's association president. My family has owned property on this lake since 1944. In the 50s and 60s, we used to ski on that lake. Whether it was legal then or not, no one stopped us. No one complained about it. We do have issues of water clarity on this lake. There could be issues brought up on how they plan on fixing that—which I would rebut against some of their ways of fixing it. ...[I]n 2009 or 2010 was the first time I've ever joined the association. At that time, there was only 44 members. They've tried to push other issues down the property owners' throats—which I'm not going to get into that. But they are not representation of the majority of the people that's around the lake."

Taylor added, "If you propose to adopt this, and it goes through and passes, I will be the first one, that if it ends up harming this lake, that you will see back here in two years, with a signed petition with a majority of the abutting property owners, signing in to strike it off the record. I do not want to harm the lake, but I believe in 2006, the lake association—it was called an 'LRE funding', and Jed Pearson looked over everything. I believe it was a management plan at DNR to provide reasonable public recreational access. And that's what I'm asking for: 'reasonable public recreational access'—just three hours a day, Sunday through Saturday. The reason that I petitioned it that way" was the only way I could include Monday holidays "was to include the whole week."

Taylor concluded, "There is a large Amish community. A lot of them are the property owners. A lot of them have pontoon boats. They can only go ten miles per hour where they'd like to pull their kids on tubes a little bit faster. And that's really about all I've got to say at the present time."

Chairman Poynter called Steve Weideman to speak.

Weideman said he is President of the Shipshewana Lake Improvement Association. "I'd like to read you the charter. 'It is to promote conservation efforts to improve and maintain the water quality of Shipshewana Lake.' We emphatically believe that to grant a speed limit exemption would be contrary to the long-term welfare of Shipshewana Lake. The physical, chemical, and biological characteristics of the lake make it very susceptible to damage due to high boat speed."

Weideman continued, "I understand that Fred [Taylor] did collect over 51% of the votes. In the process of doing so, many people were told or already believed that speed boats cleaned the lake. It aerated the water to get rid of the algae. We know that's not true, but I can see where a lot of

people would be willing to clean the lake.... That makes some of the high-percentage people who signed this petition a little suspect. I think we need to be concerned about taking care of the lake. The Lake Association has been working with the soil and water conservation district for two years on the Pigeon River Project. It's part of the St. Joe River Water Basin and the Great Lakes Basin. Anything that could possibly happen to Shipshewana Lake will end up going downstream to all those other resources. We're really concerned about that."

Weideman concluded, "From a law enforcement perspective, if you put high-speed boats on the lake three hours a day, people are going to go faster eight hours a day. I know they're only supposed to go three but know they will go faster because they have a boat that does.... Steuben County has 77 lakes and LaGrange County has 52 lakes.... We have three COs in the area, and they don't all work at the same time. It really leads to there is no one around to enforce anything pertaining to that. And that's part of our concern is that no one will be able to take care of it, even if it's allowed. It's going to get out of control, and we'll have a serious problem."

The Chair invited Linnea Petercheff of the Division of Fish and Wildlife to speak.

Petercheff began, "I just wanted to reiterate the Division of Wildlife's stand. Our staff has been to Shipshewana Lake and did a Lake and River Enhancement survey earlier this year. Our staff believes that allowing high-speed boating on this highly-eutrophic lake would pose a significant threat to fish, wildlife, and botanical resources. Dr. Gwen White, when she was here, agreed that this would be problematic. I believe in the information you were given for the agenda item we outlined the concerns for water quality and the potential impact for fish populations on the lake."

Petercheff added the Division of Fish and Wildlife was concerned that allowing high-speed boating "could increase fish kills on the lake. It's planktonic algae; it's not filamentous algae that is there. It will release the phosphorous into the lake. Bacteria as they consume that will take the oxygen that is needed for the fish with fish kills as a result. There is a wetland complex on one end of the lake so high-speed boating could potentially impact the species that live and have nests there...."

Petercheff concluded, "We believe that in following the statute, and with the research that we've done, [adopting the exemption from the restriction on high-speed boating] would be unreasonably detrimental to the fish, wildlife, and botanical resources at the lake. I know IDEM was doing a survey there this year on the lake because of the algae concerns. They gave us pictures that show lots of foam which they believe is due to the nutrient overload."

R.T. Green asked if the Division of Fish and Wildlife has performed studies on other small lakes where high-speed boating is authorized by rule.

Petercheff responded, "I haven't personally been asked to do a study" on a small lake where high-speed boating is authorized. "But I know as a result of some lakes being already granted that exemption, in a rule, that I'm sure a study was done at the time that those were added in. But I'm not aware of any in the recent past."

Green continued, "Have there been any studies that you folks have done at those lakes to see about any damage or environmental harm which may have occurred in the increase in speed?"

Petercheff, "Just that report that I gave you [in the packet] that was done as a result of this petition. I know in the LARE Program that they have done some work there. In the Build Indiana Fund, a lot of money was invested over the years to do some dredging to remove sediments. I know that a fish management study was done there, but that's all we have."

Chairman Bryan Poynter invited the Division of Law Enforcement "to present your opinions as well."

Lieutenant Colonel Steve Hunter thanked the Chair for the opportunity to speak. "As far as our part of it, we don't have any objection to" the petition. There are no major safety concerns.

Doug Grant asked, "You've got a 200-acre lake with a 200-foot buffer around it, which makes it smaller, and some other parts of it that are not very usable, and how do we feel that the Amish guy in his pontoon boat that's out there fishing, or have a dozen of them, isn't in danger when we're allowing the boats to go 70 miles an hour in the lake? It seems like I've heard in here and other places where there are larger bodies of water where there has been a concern about safety. It seems like we're down to a pond here."

Lt. Col. Hunter responded, "I guess the way I'd answer that is the law in Indiana is 'reasonable speed'. The larger the lake you have, the higher the speed you can get up to because you have more room to obtain speeds. The smaller the lake, they're just restricted by the amount of water that they have to gain that speed, and they're also more cognizant of the area that they have to use."

Grant continued, "I've been to the mat on this 'reasonable speed' before. Nobody seems to define what that is."

Jane Stautz referred to page four of the backup materials for the agenda item which has information from the Division of Law Enforcement. "You said...: 'An unreasonable hazard to persons would not result from the approval of this petition, however, if approved, we would recommend leaving the relatively narrow and shallow tail at the southeast end of the lake at 10 mph or idle only.' Do you still support that?"

Lt. Col. Hunter responded, "I did some research on that yesterday, and I think from I what I got from our boating law administrator was just because it was smaller, he felt like we could exclude that and maybe have a different situation. But in discussions with him yesterday, we didn't arrive at that conclusion. You'd be taking out more of the area of that lake and congesting the traffic on the rest of the lake. When you pull a tube or a skier, that skier is part of the boating laws and rules as they're being towed. So, if we restricted that part of the lake, then they couldn't even swing out there as they pulled around."

Stautz continued, “I’ll then take this one step further.” If the narrow and shallow tail is removed from high-speed boating, “you’re going to potentially have more safety issues” resulting from congestion. “It’s an interesting dilemma when you get into ‘small lakes’.”

Lt. Col. Hunter recalled, “We got into this discussion at Geist Reservoir. Everybody wants more and more idle zones. The more idle zones you have, the less area for high speed you have, and it just congests more and more traffic. So, it’s anybody’s call.”

Phil French asked, “Do we have counterclockwise on this lake?”

Lt. Col. Hunter responded, “Any boating law would apply.”

The Chair observed that whether to give preliminary adoption to the exemption rule seemed a close call. He asked for perspectives from members of the AOPA Committee. “I don’t like tosses of coins when it comes to matters like this, when you have interested parties on both sides.”

AOPA Committee Member, Doug Grant, reflected, “I don’t think this is even a toss of a coin. I can’t think of a more egregious example of harming the environment on a small lake. We’ve been through this before. You’ve got a shallow lake. You’ve got 200 acres. We know from what little science I’ve seen that [from eight-to-twelve miles per hour] the downdraft is about five feet. But kids aren’t water skiing anymore. They’re wakeboarding, and that pushdown goes on all the time the boat is out there. Anecdotally, all you have to do is look at the bigger lakes, and they’re scarred down now eight to twelve feet all over. That’s throwing out huge amounts of sediment, which this lake has a lot of it left over, that’s causing big algae blooms. You’re just asking for big, big trouble in the future if we start approving this kind of thing.”

AOPA Chair, Stautz, reflected, “With regard to the procedural aspects, Judge Lucas gave us a good overview of why we’re here. That should be set aside from whether or not there’s an unreasonable hazard to persons or unreasonable harm to fish, wildlife, or botanical resources. We have law enforcement here saying they may not have concerns from a safety standpoint. I look to [IC 14-15-3-11(a)(3)] for the concerns around the fish, the wildlife, and the botanical resources in the lake. As a result of that, if there are those concerns, I would recommend that we not move forward with any rule to allow high-speed boating on this lake.”

Robert Wright moved to reject the citizen petition seeking a rule to exempt Shipshewana Lake from the prohibition on motorboats operated in excess of ten-miles-per-hour. Doug Grant seconded the motion. On a voice vote, the motion carried.

Consideration of second amendment to nonrule policy document concerning agency implementation of the public trust on navigable waters and public freshwater lakes, including participation by the Lake Management Work Group (Information Bulletin #41); Administrative Cause No. 10-184W

Steve Lucas presented this item. He said for consideration was an update to a nonrule policy document, approved originally by the Commission in 2003, to address agency implementation of

the “public trust doctrine” as it pertains to “public freshwater lakes” and navigable waters. In particular, the document chronicles initiatives from the DNR and the Lake Management Work Group that apply to public freshwater lakes. The amendments would illustrate advancements to statutes by the Indiana General Assembly, as well as to rules and nonrule policy documents by the Commission, that were made since 2007 when the document was updated previously.

Lucas explained the proposed amendments were presented to the Lake Management Work Group at DNR’s Northeast Regional Headquarters on September 15. Members of the work group were generally supportive. Although they offered no language modifications, two members asked him to pass along their perspectives. Retired Indiana State Senator, Robert Meeks, emphasized the need to direct LARE funding to its statutory purposes. Peter Hippensteel, Professor Emeritus from Trine University, urged that the updates underlined the importance of the work group and the need for the General Assembly to reauthorize it. Lucas offered to answer Commission questions and presented the proposed amendments for consideration and possible approval.

Mark Ahearn “offered a special thanks to the staff that works on these projects and pays attention to keep us current. These are important when the public comes to us and gives their counsel. These are the people who work a little harder to learn sort of the ‘under-the-hood’ of how they are thinking about public freshwater lakes. I’d thank the staff for their work. I’d also move to give approval” to the proposed amendments to Information Bulletin #41. Jane Ann Stautz seconded the motion. On a voice vote, the motion carried.

Consideration of preliminary adoption for repeal of 312 IAC 24 governing state museums and historic sites; Administrative Cause No. 11-133A

The Chair again recognized Steve Lucas to present this item.

Lucas responded, “Thank you, Mr. Chairman. This is really the first step into what will be a multi-stage process. The Commission will be asked to separate the provisions in rules and nonrule policy documents that pertain to the former Division of Museums and Historic Sites of the Department. Public Law 167-2011 repealed the underlying authority for that body in former IC 14-20-1 and established a ‘public body corporate and politic’ that is now the Indiana State Museum and Historic Sites Corporation. The ISMHSC will adopt its own rules and its own nonrule policy documents. The first proposal would remove the entirety of 312 IAC 24,” an article probably best known to the Commission for the process to deaccession museum artifacts. The Commission will no longer be involved with deaccessioning. “At the request of the folks at the ISMHSC, I would ask that any public hearing on the repeal of 312 IAC 24”, and any vote to repeal the rule, be deferred until after January 1, 2012.

Chairman Poynter observed, “I know the Advisory Council has already looked at the proposed repeal of 312 IAC 24 and recommended the same.”

Lucas added, “Correct.”

Brian Blackford moved to give preliminary adoption to the repeal of 312 IAC 24, pertaining to activities of the Department's former Division of Museums and Historic Sites, with any public hearing and final Commission action to be deferred until 2012. Mark Ahearn seconded the motion. On a voice vote, the motion carried.

Consideration of repeal of Information Bulletin #5 that addresses burials at Angel Mounds State Historic Site (Information Bulletin #5); Administrative Cause No. 11-151A

Steve Lucas presented this item. For another stage in the process occasioned by P.L. 167-2011, he recommended the repeal of "Burial of Human Remains at Angel Mounds Historic Site" (Information Bulletin #5). When the nonrule policy document was approved initially in 1993, the primary purposes were to establish a process for consideration of modern burials at the Angel Family Cemetery, as well as to begin the implementation of new Federal laws pertaining to the treatment and reburial of ancient Native American remains. Recent meetings with representatives of the Indiana State Museum and Historic Sites Corporation suggested these purposes no longer warranted guidance through a nonrule policy document. The ISMHSC seems unlikely to retain the document. Personnel at the ISMHSC requested effectiveness of the repeal be deferred until January 1, 2012, and he asked that the request be honored.

Bob Wright moved to repeal "Burial of Human Remains at Angel Mounds Historic Site" (Information Bulletin #5) effective January 1, 2012. Brian Blackford seconded the motion. On a voice vote, the motion carried.

Consideration of seventh amendment to nonrule policy document, which provides procedural guidelines for conservancy districts to defer collection of cost repayments (Information Bulletin #36); Administrative Cause No. 11-109C

Steve Lucas also presented this item. He said the Commission recently amended the nonrule policy document, which applies broadly to conservancy districts, to establish processes and parameters for seeking cost reimbursements by the Department and by the Commission that are occasioned at the formation or dissolution of a conservancy district. The reimbursements were required in IC 14-33-2-20 but not historically collected. Implementation of amendments to the nonrule policy document was deferred to allow the General Assembly to repeal the statutory mandate. IC 14-33-2-20 was not repealed but was limited by Public Law 165-2011 to those circumstances in which the DNR or NRC contracted for the professional services outside State government. He recommended an additional amendment to Information Bulletin #36 to implement the modifications made this year by P.L. 165.

Jane Stautz moved to amend "Procedural Guidelines for the Implementation of the Conservancy District Article" (Information #36), as set forth in the Commission materials, to implement Public Law 165-2011. Mark Ahearn seconded the motion. On a voice vote, the motion carried.

Consideration of amendments to nonrule policy document which addresses petitions for rule change and for nonrule policy document change (Information Bulletin #7); Administrative Cause No. 11-151A

Steve Lucas also presented this item. He recommended approval of a housekeeping measure to amend the nonrule policy document, which considers petitions for rule and nonrule policy documents changes, to cross-reference a nonrule policy document approved in June and directed specifically to “small lake” speed limit exemptions. In addition, a reference to the Board of Trustees of the Division of Museums and Historic Sites would be stricken for obsolescence.

Donald Ruch moved to amend “Petitions for Rule Change and for Nonrule Policy Document Change” (Information Bulletin #7) to cross-reference “Small Lakes (Exemptions from Speed Limits)” (Information Bulletin #67) and to make other technical changes as set forth in the Commission materials. R.T. Green seconded the motion. On a voice vote, the motion carried.

ADJOURNMENT

The meeting was adjourned at approximately 12:58 p.m.